IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EDWARD HOUPT,	)	CASE NO. 1:13 CV 01836
	)	
	)	JUDGE DAN AARON POLSTER
	)	
Plaintiff,	)	
	)	
	)	**SECOND AMENDED COMPLAINT**
vs.	)	
	)	
	)	
CARLOS ROBLES et al.,	)	
	)	
	)	
Defendants.	)	
	)	

JURISDICTION

1. The Court has jurisdiction over this action based on the fact that it raises claims under the State of Ohio, 42 U.S.C. §1983, and the Fourth, Eighth and Fourteenth Amendments of the United States Constitution. This action is also brought pursuant to 28 U.S.C. §1983, 1985 and 1988 as it is an action for compensatory damages, punitive damages, and attorney fees for both State and Federal claims. This cause of action arose in Cuyahoga County, Ohio and all parties reside in the Northern District of Ohio, Eastern Division.

2. Plaintiff seeks damages in accordance with Sections 2744.01 *et seq.*, of the Ohio Revised Code. Plaintiff also seeks damages under 42 U.S.C. §1983.

PARTIES

3. Plaintiff Edward Houpt is a citizen of the United States residing in the State of Ohio. Mr. Houpt is a also resident of Cuyahoga County.

4. Defendant Carlos Robles was at all times relevant a police officer employed by Defendant City of Cleveland. In that capacity, he was responsible for the implementation of all laws, policies, regulations, and procedures of the City of Cleveland Police Department, the State of Ohio and the United States. Defendant Robles is sued in his official and individual capacities. Defendant is a "person" under 42 U.S.C.§1983 and at all times relevant to this action acted under color of law.

5. Defendant Officers John Does (1-5) at all times relevant, were employees or agents for the City of Cleveland and were under a duty to protect life in a lawful manner, and to obey the Constitution, laws, and statutes of the State of Ohio, and the United States. Defendants are "persons" under 42 U.S.C.§1983 and at all times relevant to this action acted under color of law. Defendants are sued in their individual and official capacity. John Does 1-5 ("Does") are those individuals and entities whom took part in Mr. Houpt's unlawful arrest, detention, incarceration and detention and/or the destruction of evidence critical to Mr. Houpt's case. These individuals also had a duty to protect Mr. Houpt and to intervene when it became apparent that Mr. Houpt's rights were being violated. Some of these individuals are also policy makers or were deliberately indifferent to an obvious need for corrective action.

BACKGROUND FACTS AND GENERAL ALLEGATIONS

6. On or about August 2, 2013 Plaintiff Edward Houpt (hereinafter "Houpt") was arrested for disorderly conduct in the City of Cleveland.

7. Plaintiff Houpt was taken to Cleveland Police Headquarters for booking and processing. City of Cleveland Police Officer Carlos M. Robles (hereinafter "Robles") transported Mr. Houpt to the City of Cleveland Jail Facility (the Justice Center) and parked in an underground transport area next to an elevator.

8. A video surveillance camera recorded Officer Robles opening the back door of the police vehicle for Mr. Houpt. The video also shows Mr. Houpt, while in handcuffs, getting up and out of the police car with no assistance from anyone.

9. The surveillance video also shows Officer Robles, along with three other City of Cleveland Police Officers and two arrestees, waiting for the elevator.

10. After the elevator door opens, Officer Robles forcefully and violently pushes Mr. Houpt from behind in such a manner as to bum-rush him into the back of the elevator. Officer Robles intentionally, willfully and in a malicious manner bum-rushed Mr. Houpt into the elevator and smashed Mr. Houpt's face into the back wall of the elevator. Officer Robles knew Mr. Houpt was handcuffed and therefore unable to protect himself. There was no legal justification for Officer Robles' actions.

11. Mr. Houpt suffered severe and immediate physical injury. As a result of Officer Robles assault, Mr. Houpt sustained injury to his right wrist/forearm and a nasal fracture (broken nose). The injury to Mr. Houpt's nose was so severe that he was required to have surgery (an "open septorhinoplasty") at the Cleveland Clinic.

12. In an effort to cover up for his misdeeds, Officer Robles reported to his supervisors that Mr. Houpt was responsible for his own injuries. Officer Robles stated that when the time came to get on the elevator, Mr. Houpt resisted moving such that Officer Robles was forced to push Mr. Houpt into the elevator by his hips. Officer Robles alleges that Mr. Houpt's "momentum took him into the elevator where he went in and struck the front of his

body and face against the rear wall". The surveillance video, however, disproves Officer Robles' allegations.

13. At the time Officer Robles broke Mr. Houpt's nose, Mr. Houpt was handcuffed, surrounded by four (4) Cleveland Police Officers, and standing in the basement/transport area of the Cuyahoga County Justice Center. Mr. Houpt did not pose any risk of harm to himself or others, nor did he pose a risk of flight.

14. Upon information and belief other surveillance video, dash cam recordings, radio and mic communications, as well as in-custody photographs, have been destroyed and or permanently altered by the Defendants so as to critically damage Plaintiff Houpt's lawsuit.

15. As a direct and proximate result of the Defendants' acts as set forth herein, Mr. Houpt sustained serious physical and emotional injuries, anguish, pain and suffering, lost wages, a violation of his Constitutional rights, and other economic and non-economic damages.

FIRST CAUSE OF ACTION
Excessive Force

16. Paragraphs 1 through 15 are incorporated by reference herein as if fully rewritten.

17. The actions of Officer Robles constitute an unjustifiable and excessive use of force without legal justification. Their actions were deliberately indifferent, reckless, wanton and shocking to the conscience, all of which deprived Plaintiff Houpt of his civil rights, as secured by the Fourth and Fourteenth Amendments to the United States Constitution and through 42 U.S. C. §1983.

18. The actions of Defendant Robles were committed maliciously and/or in an unreasonable, wanton and/or reckless manner.

19. Defendants' actions were performed under color of law and deprived Mr. Houpt of federally protected rights, in violation of 42 U.S.C. § 1983.

20. As a direct and proximate result of the wrongful conduct of Defendants, Plaintiff Houpt suffered serious and permanent physical injuries and extreme emotional distress.

SECOND CAUSE OF ACTION
Excessive Force – Substantive Due Process

21. Paragraphs 1 though 20 are incorporated by reference herein as if fully rewritten.

22. The acts and omissions of Defendants Robles and John Does 1-5 constitute excessive force under the Eighth and Fourteenth Amendments. Defendants intentionally denied Mr. Houpt of his Eight and Fourteenth Amendment rights.

23. As a direct and proximate result of the Defendants' intentional denial of Mr. Houpt's Eighth and Fourteenth Amendment rights, he sustained serious and permanent physical injuries, emotional distress, and other economic and non-economic damages.

THIRD CAUSE OF ACTION
Negligence

24. Paragraphs 1 though 23 are incorporated by reference herein as if fully rewritten.

25. The Defendants Robles and John Does 1-5 acted in a negligent manner such that Mr. Houpt sustained injury, damages and economic and non-economic losses. Their conduct is not subject to the defense of immunity, set forth in Ohio Revised Code §2744.01 *et seq.*, based on the fact that they acted in a willful, wanton, and reckless manner.

FOURTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress

26. Paragraphs 1 though 25 are incorporated by reference herein as if fully rewritten.

27. Through his unreasonable and unlawful conduct, Defendant Robles either intended to cause Mr. Houpt emotional distress or knew or should have known that his actions or inactions would result in serious emotional distress. Further, Officer Robles' actions toward Mr. Houpt were so extreme and outrageous as to go beyond all possible bounds of decency and were intolerable.

28. Officer Robles' actions have directly and proximately caused Mr. Houpt psychic injury from which he suffers and will continue to suffer into the future.

FIFTH CAUSE OF ACTION
Assault and Battery

29. Paragraphs 1 though 28 are incorporated by reference herein as if fully rewritten.

30. The acts and omissions of Officer Robles constituted assault and battery, as well as willful, wanton, intentional, and reckless conduct under the law of the State of Ohio.

31. As a direct and proximate result of the assault and battery, Mr. Houpt sustained serious and permanent physical injuries and emotional distress.

SIXTH CAUSE OF ACTION
Spoliation of Evidence

32. Paragraphs 1 though 31 are incorporated by reference herein as if fully rewritten.

33. Defendants knew that there was pending and/or probable litigation involving Plaintiff Mr. Houpt.

34. With that knowledge, Defendants willfully destroyed evidence for the purpose of disrupting Plaintiff's case or covering up Defendants' conduct as set forth herein.

35. As a result of Defendants' conduct, Plaintiff Houpt's claim has been disrupted.

36. As a proximate result of Defendants' conduct, Plaintiff has incurred unnecessary delay and additional legal fees and other expenses, consequential and incidental damages and other damages.

DAMAGES

37. Paragraphs 1 though 36 are incorporated by reference herein as if fully rewritten.

38. As a direct and proximate result of the Defendants' conduct, Plaintiff Mr. Houpt has suffered and continues to suffer substantial physical pain, loss of ability to perform daily functions, mental anguish and emotional distress, as well as injury to reputation and humiliation, some or all of which may be permanent.

39. As a direct and proximate result of the Defendants' conduct, Plaintiff Mr. Houpt has incurred loss of income, out of pocket expenses, substantial costs and expenses, including but not limited to, legal fees.

40. Mr. Houpt's physical, mental, and emotional injuries are serious, and are of such a nature that no reasonable person could be expected to endure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, for:

(A) Compensatory and consequential damages for all the injuries identified in the amount in excess of one hundred thousand dollars ($100,000.00);

(B) Punitive damages in an amount to be determined at trial for the willful and malicious conduct of Defendant Robles;

(C) Attorneys' fees and the costs of this action and other costs that may be associated with this action; and

(D) Any and all other relief that this Court deems equitable, necessary, and just.

/s/ *Paul J. Cristallo*
PAUL J. CRISTALLO (0061820)
CRISTALLO LAW OFFICE
55 Public Square
Suite 1055
Cleveland, OH 44113
Telephone: (216) 456-0925
Facsimile: (216) 621-0427
E-Mail: cristallolaw@gmail.com

/s/ *Timothy Hess*
TIMOTHY HESS (0074995)
T. HESS & ASSOCIATES, LLC.
The Standard Building
1370 Ontario Street, Suite 1520
Cleveland, OH 44113
Phone: (216) 696-2915
Fax: (216) 696-3228
Email: TimHess22@me.com

COUNSEL FOR PLAINTIFF

JURY TRIAL DEMAND

A trial by jury is hereby requested in the within cause of action.

/s/ *Paul J. Cristallo*
PAUL J. CRISTALLO
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on this 8th day of September, 2014 the foregoing Plaintiff's Second Amended Complaint was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Paul J. Cristallo_________
PAUL J. CRISTALLO (0061820)
Counsel for Plaintiff Edward Houpt